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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,975	10/11/2001	Robert W. Casey	RWC 01065	9812

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EXAMINER

CARIASO, ALAN B

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/973,975

Applicant(s)

W. CASEY, ROBERT

Examiner

Alan Cariaso

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's response/amendment filed February 21, 2006 is acknowledged. Claims 1-14 are pending. Claim 1 is amended.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by GRITT et al (US 1,901,294).
4. GRITT discloses a lighting system (20-30, fig.1) for illuminating an interior of a fireplace (1-5, figs.1-2), comprising: a rod (andiron 6) for or capable of securing said lighting system to an inner surface (backwall 2, fig.2) of such fireplace (1-5); a bracket member (17, fig.2) engageable (col.2, line 2) with the rod (6), a first means (socket 20, lamp 21) attached to the bracket member (17) for providing illumination; a second

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means inherently connected to the first means (20,21) for providing power to the first means (20,21) for illumination.

5. Claims 1, 6-10, and 12-14 are rejected under 35 U.S.C. 102(e) as being anticipated by DEUTSCH et al (US 6,431,730 B1).

6. DEUTSCH discloses a lighting system (10, fig.1), comprising: a rod (24, figs.1 & 5); a bracket member (26,28) engageable with the rod (24, figs.1,3, & 4), a first means (light strands 34,36,38,40, col.2, lines 60-64) attached to the bracket member (26,28) for providing illumination; a second means (power source/wall outlet 46) connected to the first means (34,36,38,40) for providing power to the first means (34,36,38,40) for illumination; wherein the first means (34,36,38,40) includes a plurality of incandescent lamps which may be different colored lamps (col.1, lines 13-15, col.2, lines 60-64); wherein the rod (24) is an expandable rod that is spring loaded (col.3, lines 40-43); wherein the expandable rod has mechanical means (spring 62 within tubular sections 58,60) for providing expansion; wherein the expandable rod (24) further includes pads (64,66, fig.5) on each end (48,50) of the expandable rod (24); wherein the pads (64,66) are an elastomeric composition being rubber (col.3, line 49).

7. In regards to the recitations "for illuminating an interior of a fireplace" and "for securing said lighting system to an inner surface of such fireplace", any recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the

intended use, then it meets the claim. The lighting rod support system of DEUTSCH is capable of illuminating an interior of an interior wall opening (col.1, lines 34-45) such as a fireplace and the rod is capable of securing the lighting system to an inner wall surface (col.1, lines 46-50) of such fireplace.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over GRITT et al (US 1,901,294) in view of CONSTANTINE (US 2,631,040).

10. Claims 2, 3 and 5 commonly recite the second means being a standard 110 volt electrical circuit, not disclosed by GRITT. CONSTANTINE teaches a plug of the lighting system connected to a conventional alternate or direct current power mains (col.2, lines 15-17) having a voltage of 115 volts (col.2, lines 55-56) for the purpose of providing adequate power to operate and illuminate the lighting system. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lighting system of GRITT et al to include the type of standard electrical circuit or source as taught by CONSTANTINE in order to operate and illuminate the lighting system by easy connection to a standard power source or circuit of 115 voltage made standard and available in households.

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11. Claims 4, 6 and 7 recite a flasher arrangement, a plurality of incandescent lamps, and the lamps being different colored lamps, respectively, not disclosed by GRITT.

CONSTANTINE teaches a plurality of different colored incandescent lamps (col.1, line 51, col.2, lines 1-2) connected to a flasher arrangement (14, col.2, lines 2-22) for the purpose of providing an illuminated glow with continual varying intensity of illumination at random intervals (col.1) to simulate a fireplace flame. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fireplace illumination system of GRITT et al to include the plurality of colored lamps and flasher arrangement as taught by CONSTANTINE in order to make the simulated fire appear more real and spread out with plural glowing and flickering sources.

12. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over DEUTSCH et al (US 6,431,730 B1) in view of MILLER (US 953,425).

13. Claim 11 recites the mechanical means including a collar and thumb screw arrangement to secure the rod for whatever expansion is desired, not disclosed by DEUTSCH. MILLER teaches a sleeve (5) and screw (1b) arrangement (figs.2-3) for the purpose of selectively fixing the desired axial positioning after adjusting of the length of elongate lamp support (1) between sidewalls (A,A, figs.1-2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the axially adjustable light support rod of DEUTSCH et al to include the type of sleeve or collar and screw arrangement as taught by MILLER in order to fix the selected axial length of the rod between walls to which the rod is attached, especially if the bias

in the springs do not have adequate strength to maintain the rod between the walls by itself.

Response to Arguments

14. Applicant argues that a log (of Constantine) can hardly be compared to a rod, that such logs are not really an inner wall surface of the fireplace, as now claimed. In response, claims are given the broadest reasonable interpretation consistent with either the specification (In re Hyatt) or with the interpretation of those skilled in the art would reach (In re Cortright). It is reasonable to refer a log to a rod, both of which are elongate and substantially rigid. In regards to the log not being an inner wall surface of the fireplace, the log or rod does not appear to be capable of securing the lighting system to an inner wall surface of the fireplace, therefore, the rejection of claims as being anticipated by Constantine is withdrawn. With further consideration, a new rejection is made in view of Gritt et al. Gritt shows rod portions of the andiron (6) as best shown in figures 2 and 3 extending towards and in close contact with the back wall (2), which adequately shows a rod for securing the lighting system to an inner wall surface of the fireplace.

15. Applicant argues that there is no teaching or even a suggestion in Bridgewater about an illumination system for illuminating the interior of a fireplace, and that the elements labeled 16 are hardly a rod in the sense of the present invention and instead are basically parts of the grate which are used to support the logs 10 and 11. In response, Bridgewater adequately discloses the claimed structure of a first means (gas

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burner pipe 21) for providing illumination and second means for providing power to the first means, the second means being claimed in the alternative as gas (in applicant's claim 2). Such recitations of providing illumination (apparent by visible flames 32 & 40 in figs.1-2) and power (gas fuel combustion) are recitations of the intended use of the claimed invention which do not result in a structural difference between the claimed first and second means of the invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. And it is apparent that the flame source and gas fuel of Bridgewater are capable of illuminating the interior of the fireplace and providing power to the illuminating source, respectively. As for the parts of the grate in Bridgewater hardly being a rod, it is a reasonable interpretation to refer to the bars (16) of the grate structure of Bridgewater as rods. As an example of grate elements referred to as rod, RIEGER (US 4,838,240) shows a fireplace grate (11) including bars (13,15) and rods (14) in col.3, lines 3-5. However, the rejection of claims as being anticipated by Bridgewater is withdrawn for another reason, that the rod may not be capable of securing the lighting system to the inner wall surface as now claimed. A new ground of rejection is made in view of the references to Deutsch et al (US 6,431,730) and Miller (US 953,425).

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. RIEGER (US 4,838,240) shows a fireplace gas burner assembly

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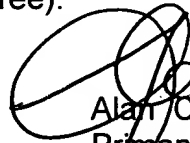
having a pilot lighter (31), which is a gas-powered light source, mounted on a grate structure of bars (13,15) and rods (14) with adjacent bracket (16). CRAWFORD (US 1,582,737) shows grate-bar support (24,26) capable of securing itself to three vertical walls of a fireplace. SCHLETT (US 2,285,535) shows a rod (34, figures 2 and 5) securing itself and spangles or light-sparkling elements (36, fig.2) to a vertical wall (10, fig.5) of a fireplace. SCHERER (US 3,378,003) shows a bar or rod (7) of adjustable axial length affixed to opposing vertical walls of a fireplace to secure a screen/curtain within the interior or opening of the fireplace. YAMAGISHI (US 3,952,722) shows a bar of adjustable axial length securing reflector panels to interior vertical walls of a fireplace.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alan Cariaso whose telephone number is (571) 272-2366. The examiner can normally be reached on 9-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Alan Cariaso', is written over the printed name.

Alan Cariaso
Primary Examiner
Art Unit 2875

May 5, 2006

AC